

State Sovereignty After 9/11: Disorganised Hypocrisy

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This article examines the implications of the 9/11 attacks and the US-led 'global war on terror' for debates about state sovereignty. To support its attacks on Afghanistan and Iraq, the Bush administration put forth a 'selective sovereignty' thesis that would legitimise intervention in states that are accused of supporting terrorists. This new rationale for intervention was paradoxically justified as a means of ensuring a 'well-ordered world of sovereign states', which had been imperilled by transnational terrorist networks. This article argues that the 'selective sovereignty' thesis exaggerates the challenge posed by terrorist organisations to Westphalian sovereignty, and understates the US's own unprincipled violation of its core norm of non-intervention. A related argument of this article is that on the face of it, the 'selective sovereignty' approach fits the notion of 'organised hypocrisy' put forward by Stephen Krasner, which refers to 'the presence of long-standing norms [in this case non-intervention] that are frequently violated' for the sake of some 'higher principles' – violations that are generally tolerated by the international community. But the higher principles evoked by the US to justify its war on Iraq, such as the human rights of the Iraqis, and democracy promotion in the Middle East, are now clearly seen to have been a façade to mask the geopolitical and ideological underpinnings of the invasion. In this sense, the war on terror has revived national security and naked self-interest as the principal rationale for intervention, notwithstanding the self-serving efforts by some Bush administration officials to 'graft' the 'selective sovereignty' thesis on to the evolving humanitarian intervention principle. This policy framework is hypocrisy for sure, but as the international response to the war on Iraq (including the lack of UN authorisation for the war and the transatlantic discord it generated) demonstrates, it should be viewed more as a case of 'disorganised hypocrisy'.

Theoretical Argument

The 9/11 terrorist attacks have introduced a new complexity to the debate about sovereignty in world politics. Before 9/11, this debate revolved around two main issues. The first was the impact of globalisation on the nation state framework, including questions about whether sovereignty is being eroded by transnational economic linkages, such as trade, production networks and financial flows. The other centred on the doctrine of humanitarian intervention, and the normative question about whether the non-intervention principle should be relaxed or bypassed to allow military action against genocide or state failure.¹ The principal challengers to sovereignty in these debates were multinational corporations, 'activists beyond borders' and, to a lesser extent, multilateral organisations.

While the above debates about the place of sovereignty in the emerging world order are by no means settled, they have been joined in the post-9/11 era by debates about sovereignty from a new source: the 'war on terror' waged by the world's most powerful state and its allies against their 'severest' foe, transnational terrorist networks led by al Qa'eda.² This challenge differs from the pre-9/11



(although still ongoing) challenges in two respects. First, it has returned the rationale for limiting sovereignty to the overriding importance of *national security*, rather than human security or welfare, which were central to the globalisation and humanitarian intervention debates. Although one has to be mindful that terrorism is not the same as aggression, and that the source of the terrorist threat is not another state or alliance but a transnational network of non-state actors, the response of the states to the terrorism has been framed overwhelmingly as a threat to state security and international order. Hence the securitising metaphor: the 'war on terror'. Second, the post-9/11 challenge to sovereignty is organised and led by a hegemonic state (although it is also backed by a number of other states allied with the hegemon) which is seeking simultaneously to safeguard and limit Westphalian sovereignty to suit its particularistic interests. Indeed, the attempt by the US to limit sovereignty is being justified in the name of protecting it, or safeguarding the system of sovereign states.

To elaborate, the war on terror is justified as protecting 'national security' from a transnational menace which challenges it by its very mode of organisation and operation and its presumed political agenda, including an alleged aspiration to restore the pre-Westphalian caliphate. But in so doing, the leading state waging this war and its supporters also exempt themselves from the norms of the Westphalian order, and approve instruments that could be profoundly subversive of that order. It is this paradoxical framing of the war on terror and its implications for the condition of state sovereignty in the post-9/11 world that constitute the focus of this essay.

A good starting point for examining the paradox of Westphalian sovereignty in the age of terror is the theoretical framing of sovereignty as 'organised hypocrisy' by political scientist and senior Bush administration official Stephen Krasner (Krasner, 1999).³ The essence of this concept revolves around an apparent puzzle: 'the presence of long-standing norms that are frequently violated' (Krasner, 1999). Although previous studies of sovereignty tended to separate two categories of challenges – voluntary efforts such as the European integration process or coercive efforts such as interventions of a geopolitical or humanitarian variety, Krasner's notion attempts to place both types of challenge under the same umbrella, regarding them as manifestations of organised hypocrisy. The key aspect of organised hypocrisy is that the violators justify their acts in the name of other, alternative or higher sets of norms. As Krasner states, organised hypocrisy occurs when the rules of sovereignty are 'worked around', and when 'the workarounds, which have been things like claims about human rights, minority rights, religious toleration, have always evoked alternative norms' (Krasner interview with Kreisler, 2003). Moreover, these transgressions occur without much protest: 'there are very clear rules about how sovereignty works, and they were violated frequently, much more frequently than people had imagined ... Yet people were not screaming and yelling about hypocrisy, nor were they trying to find new rules' (Krasner interview with Kreisler, 2003).

The organised hypocrisy formulation does seem to capture some aspects of the war on terror, which includes, but is not limited to, the war in Iraq. First, as a host of observers and writers, from UN Secretary-General Kofi Annan (BBC, 2004) to Krasner himself (who served twice in the George W. Bush administration)⁴ have noted, the US occupation of Iraq did breach Westphalian sovereignty. Annan termed the US invasion 'illegal', while Krasner said rather unambiguously: 'We didn't just go and say, "We're going to reconstruct these countries and then allow them to choose their own form of government". We said, "We are going to transform these countries"'. This to him is 'a total violation of Westphalian-Vattelien sovereignty' (Krasner interview with Kreisler, 2003). Second, the war in Iraq was justified by the US in the name of alternative principles, e.g. human rights and international stability, two of the four alternative norms which Krasner identifies (the other two being religious toleration and minority rights) as the basis for violating sovereignty.

But in this article I raise three objections to applying the organised hypocrisy concept to describe and analyse the condition of state sovereignty in the post-9/11 era. First, the 'limits to sovereignty' thesis put forward by the US and allies like the UK and Australia, and related policy instruments such as pre-emption and regime change, are not so much transgressions of state sovereignty as instruments to preserve and protect a 'well-ordered system of sovereign states'. In other words, the question is not whether sovereignty is at stake, but whose sovereignty. Second, while the war on terror, including the invasion of Iraq, has been justified for the sake of higher principles – especially the human rights of the Iraqis – these are now understood to have been a façade to mask the geopolitical and ideological underpinnings of the invasion. The real justification is not about a 'higher' principle, but the conventional requirements of 'national security', and an international order conducive to the protection and promotion of the national security interests of the most powerful states. And even so, those at the forefront of the global war on terror vastly exaggerate the capacity of their adversary to subvert the Westphalian order and hence undermine their national security. The ability, or even the intention, of terror groups to inflict such damage is limited by their divergent and varied objectives, their lack of physical capacity fundamentally to disrupt international security, and the need of at least some of these groups for state-like institutions and territorial organisation to realise their professed political objectives. And their actions have provoked retaliatory measures which have strengthened the national security state domestically *vis-à-vis* the civil society and externally in relation to the agents of and mechanisms of globalisation.

Third, while violations of sovereignty have occurred through history, and the war on terror may thus simply be seen as the most recent manifestation of what has been a long-standing and familiar story in world politics, it is simply wrong to lump all sorts of challenges to state sovereignty under the single overarching rubric of organised hypocrisy. Krasner accepts that Westphalian-Vattelien sovereignty can be compromised either coercively (such as the United States in Germany or Japan

after the Second World War), or voluntarily, as in the European Union and though the European Human Rights regime. But violations undertaken in the name of a narrowly defined conception of national security, which is what America's Bush Doctrine is really about, do not have the same moral weight or legitimacy as collective violations of Westphalian sovereignty by the international community for the sake of preventing genocide or protecting lives. Similarly, voluntary surrenders of sovereignty by a group of states for the sake of long-term pacification and community building, such as the EU's integration agenda, can hardly be treated in the same breath as violations of others' sovereignty by a hegemon committed unilaterally to fulfilment of an imperial (neo-conservative) ideology. Humanitarian intervention, of the type outlined in the R2P report (International Commission on Intervention and State Sovereignty, 2001), may be considered a form of organised hypocrisy, but the norm it invokes as justification does not have moral equivalence with the strategic and national security justifications advanced by the US in support of pre-emption or regime change.

In other words, the rationale for violations of sovereignty and the mode of the violations differ. More importantly, these variations do matter. This leads to a fundamental problem with labelling post-9/11 sovereignty as organised hypocrisy: how 'organised' is the 'organised hypocrisy' in the war on terror? To qualify actions undertaken by the Bush administration such as the invasion of Iraq and the doctrine of pre-emption as 'organised' would accord them a legitimacy that they simply do not enjoy. At the very least, the degree of complicity in the organisation of hypocrisy varies between those who joined the coalition of the willing and those who did not. The most powerful state bears a disproportionate share of the responsibility for the organisation of these particular acts of hypocrisy.

The idea that sovereignty is open to interpretation and construction, which lies at the heart of the organised hypocrisy thesis, is hardly new in itself. A good deal of the constructivist literature on sovereignty grapples with this question (see, for example, Bartelson, 1995; Biersteker and Weber, 1996; Onuf, 1991; Weber, 1995; Wendt, 1999). What is distinctive about the Krasner thesis, however, is not that such interpretations and constructions occur, but that they occur without evoking much protest or challenge (people do not scream and yell, or try to find new rules). This assertion, however, is open to serious question. The US pronouncements about limits to sovereignty after 9/11 are far from being accepted or tolerated by the majority of the international community, including many of its allies in Western Europe. And people *are trying to find new rules*; not to replace sovereignty *per se*, as the *Grundnorm* of international politics, but in order to reframe it as 'responsibility to protect' people throughout the world. Governments as well as civil society organisations are indeed 'screaming and yelling', even though this may not be reaching the ears of senior US officials. The term 'organised hypocrisy' obscures real divisions and struggles over the meaning of sovereignty in the international community, and variations in the ways in which different actors or groups of states violate the norms of

Westphalian sovereignty. The more appropriate term for describing the war on terror's reshaping of the concept and practice of state sovereignty is not organised hypocrisy, but disorganised hypocrisy. Disorganised hypocrisy occurs when the leading state, backed by a small number of like-minded allies (often in disregard of their own domestic opinion), unilaterally changes (or attempts to change) the rules of sovereignty (or any other meta-norm) by falsely basing the change on previous and legitimate attempts at limiting sovereignty, and when such transgressions are contested by others in the international community who are themselves striving, through alternative arguments and modes of action, for a consensus on how to limit state sovereignty in a more legitimate and multilateral manner. A review of the war on terror conducted by the US attests to the relevance of my reformulation.

Selective Sovereignty: The Responsibility to Attack

In order to ascertain whether the war on terror fits the representation of sovereignty as 'disorganised hypocrisy', we need to examine whether actions undertaken in the name of the war on terror constitute a violation of sovereignty and if so, under what pretext or in the name of which other, higher principles are such violations justified. From the perspective of the US post-9/11, there is little doubt about the US argument that the war on terror constituted a turning point requiring limitations to the traditional notion of sovereignty. President Bush's speech immediately after 9/11 warned:

we will pursue nations that provide aid or safe haven to terrorism. Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists. From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime (Bush, 2001).

This speech, presaging the US attack on the Taliban in December 2001 in retaliation against the Taliban's sheltering of Osama bin Laden and other terrorist leaders and groups, was the basis of the administration's 'limits to sovereignty' thesis, put forward by Richard Haas, the director of Policy Planning in the US State Department:

Sovereignty entails obligations. One is not to massacre your own people. Another is not to support terrorism in any way. If a government fails to meet these obligations, then it forfeits some of the normal advantages of sovereignty, including the right to be left alone inside your own territory. Other governments, including the United States, gain the right to intervene. In the case of terrorism, this can even lead to a right of preventive, or peremptory, self-defense. You essentially can act in anticipation if you have grounds to think it's a question of when, and not if, you're going to be attacked (Lemann, 2002).

Haas's words should not be construed as the philosophical musings of a lone administration intellectual heading the think tank-like Policy Planning office of the State Department led by Colin Powell, whose own influence over issues

related to the war on terror was eclipsed by Dick Cheney's White House or Donald Rumsfeld's Pentagon. Indeed, more than four years after 9/11, Douglas Feith, Haas's counterpart in the Pentagon as Under Secretary of Defense for Policy, would argue in a speech before the Council on Foreign Relations (now headed by Richard Haas):

The United States strengthens its national security when it promotes a well-ordered world of sovereign states: a world in which states respect one another's rights to choose how they want to live; a world in which states do not commit aggression and have governments that can and do control their own territory; a world in which states have governments that are responsible and obey, as it were, the rules of the road. The importance of promoting a well-ordered world of sovereign states was brought home to Americans by 9/11, when terrorists enjoying safe haven in remote Afghanistan exploited 'globalization' and the free and open nature of various Western countries to attack us disastrously here at home. Sovereignty means not just a country's right to command respect for its independence, but also the duty to take responsibility for what occurs on one's territory, and, in particular, to do what it takes to prevent one's territory from being used as a base for attacks against others (Feith, 2005).

Two aspects of the 'limits to sovereignty' thesis stand out. The first is its conscious linking or equating of the war on terror with the earlier discourse about humanitarian intervention. And from a more long-term perspective, it adds terrorism to the list of causes, including acute human rights violations, that could justify disregarding the Westphalian norm of non-intervention. The second is its extension of the mode of intervention from reactive to preventive. Together, they constitute a significant broadening of the framework of intervention.

The invasion of Iraq, which after Afghanistan was the next stage in the war on terror, produced an additional rationale for, and broadening of, the 'limits to sovereignty' thesis. This came a year after 9/11 in the form of the National Security Strategy of the United States, otherwise known as the Bush Doctrine. John Lewis Gaddis has described the Bush Doctrine, including its emphasis on regime change and pre-emption, as 'a grand strategy of transformation' (Gaddis, 2002). Already indicated in statements like Haas's comments cited earlier, the Doctrine called for using force, pre-emptively if necessary, to deal with regimes which pose a threat to US strategic interests, not just by sponsoring or sheltering terrorists but also by acquiring or seeking to acquire weapons of mass destruction. Postmodern terrorists, ever so elusive and willing to commit suicide, are 'undeterrable non-state enemies', ill-suited for deterrence and containment which work only against a clear and identifiable adversary (Record, 2003). 'If we wait for threats to fully materialize, we will have waited too long' (O'Hanlon *et al.*, 2002).

The resulting Bush Doctrine was not a lone American crusade. Although the US as the world's sole superpower was at its forefront, it was also endorsed, to varying degrees, by a number of other countries, especially Australia (Acharya, 2005).

What are the conditions or provocations that would justify limiting sovereignty? The war on terror has identified several immediate and long-term reasons, ranging from the removal of terrorist sanctuaries to the threat posed by the weapons of mass destruction in the hands of terrorists and their sponsoring states, and the protection of human rights from abusive regimes which are also sponsors of terrorism and proliferators of weapons of mass destruction.⁵ Interestingly, the Bush administration's promotion of democracy in the Middle East is not seen as a violation of sovereignty because it could be undertaken without resort to force. 'Respect for sovereignty' did not 'require us to ignore the depredations of tyrannical regimes', since 'one can ... encourage countries to adopt democracy without offending the principle of sovereignty' (Feith, 2005). This is notwithstanding the fact that the ideology behind the Iraq invasion, promoted by the neo-conservatives, is not shy of sanctioning the use of military power to realise and maintain US pre-eminence, and places the promotion of democracy at its core.

To be sure, an expanded agenda of intervention is nothing new in world politics. The debate about humanitarian intervention has been going on for decades. In 1992, an *International Herald Tribune* editorial noted: 'In just a few years the idea has been established that countries which fail to care decently for their citizens dilute their claim to sovereignty and forfeit invulnerability to outside political-military intervention' (*International Herald Tribune*, 1992, p. 6). Some writers had taken it much further, adding ecological and proliferation issues to the agenda of intervention. Laurence Martin, then President of the Royal Institute of International Affairs, had argued that despite the end of the Cold War, there would 'remain substantial motives for the greater powers ... to interest themselves in the third world', because of the dangers of proliferation of weapons of mass destruction, migration caused by demographic pressures and 'moral concern for the welfare of fellow men'. To this, he would add 'the current wave of enthusiasm for democracy and the market, lest failure should engender new authoritarian and potentially aggressive tendencies' (Martin, 1992, p. 21). Alan Henrikson has suggested 'three classes of purpose warranting possible intervention':

intervention to prevent or stop the wide-spread violation of human rights ('humanitarian intervention'); intervention to halt the imminent and continued use of weapons of mass destruction, including chemical, biological, and nuclear weapons, perhaps borne by ballistic missiles ('security intervention'); and intervention to block or contain the release of materials causing severe and wide damage to the climate, landscape, or seascape ('environmental intervention') (Henrikson, 1992, pp. 70–1).

Yet the war on terror's challenge to sovereignty assumes a special significance that could not have been foreseen by the post-Cold War ideas about intervention. First, it links different types of reasons for intervention within its 'axis of evil' formulation, bringing together sponsorship of terrorism, weapons of mass destruction and abuse of human rights as reasons for intervention. Second, this

consolidated agenda for intervention is spearheaded by the world's most powerful state, thereby upsetting the balance between what Hedley Bull had called the Cold War era balance between the 'interveners' and the 'intervened against'.⁶

Moreover, as noted, the war on terror, unlike the logic of humanitarian intervention, is not aimed at eroding (in however principled a manner) the Westphalian system, but at strengthening it.⁷ Fighting terrorism through intervention is just as important to national security, and the sanctity of the Westphalian order, as fighting conventional aggression to preserve territorial integrity, which had historically been the most important concern for protecting the Westphalian order. This is because while the war on terror may involve some transgressions of sovereignty of states which are part of or similar to the 'axis of evil' members, from the perspective of those waging the war on terror, the threat to Westphalia posed by the US and the coalition of the willing is nothing compared to the threat to sovereignty posed by terrorist organisations and networks.

Westphalia and Caliphobia

This brings us to the next challenge to framing the war on terror as organised hypocrisy. This concerns the possible justification for the war on terror for the sake of a 'higher principle'. Given that the protection of human rights and promotion of democracy were not offered as the only or most important justifications for the war, even by the Bush administration (it was weapons of mass destruction and alleged Iraqi support for al-Qa'eda),⁸ the question of higher principles has to do with the preservation of the Westphalian system, or as administration officials would put it, 'promoting a well-ordered world of sovereign states'.

In redefining sovereignty in the wake of 9/11, the US initially targeted two categories of actors: failed states which offer, either deliberately or due to a lack of capacity to control their borders, sanctuary to terrorists; and regimes which export terrorism and acquire weapons of mass destruction. This basically reflected the administration's rationalisation of its attacks on Afghanistan and Iraq, respectively. As the insurgency in Iraq worsened, it came up with another target – this time a non-state actor, but with the aspiration to restore a pre-Westphalian state: the caliphate.⁹

Thus, speaking at Johns Hopkins University's Paul H. Nitze School of Advanced International Studies on 5 December 2005, Defense Secretary Donald Rumsfeld warned: 'Iraq would serve as the new base of a new Islamic caliphate to extend throughout the Middle East and which would threaten legitimate governments around the world ... This is their plan. They have said so' (US Department of Defense, 2005). Eric Edelman, the new Under Secretary of Defense for policy argued: 'Iraq's future will either embolden terrorists and expand their reach and ability to re-establish a caliphate, or it will deal them a crippling blow. For us,

failure in Iraq is just not an option.’ (Council on Foreign Relations, 2005). General John Abizaid, the top American commander in the Middle East, warned: ‘They will try to re-establish a caliphate throughout the entire Muslim world’ (cited in Bumiller, 2005). And Vice President Dick Cheney reminded: ‘They talk about wanting to re-establish what you could refer to as the seventh-century caliphate’, to be ‘governed by Shariah law, the most rigid interpretation of the Koran’ (cited in Bumiller, 2005). (Stephen Hadley, the national security adviser, has also warned of the caliphate.) Bush himself, although not using the term ‘caliphate’ per se, has warned of ‘a totalitarian Islamic empire that reaches from Indonesia to Spain’ (cited in Bumiller, 2005).

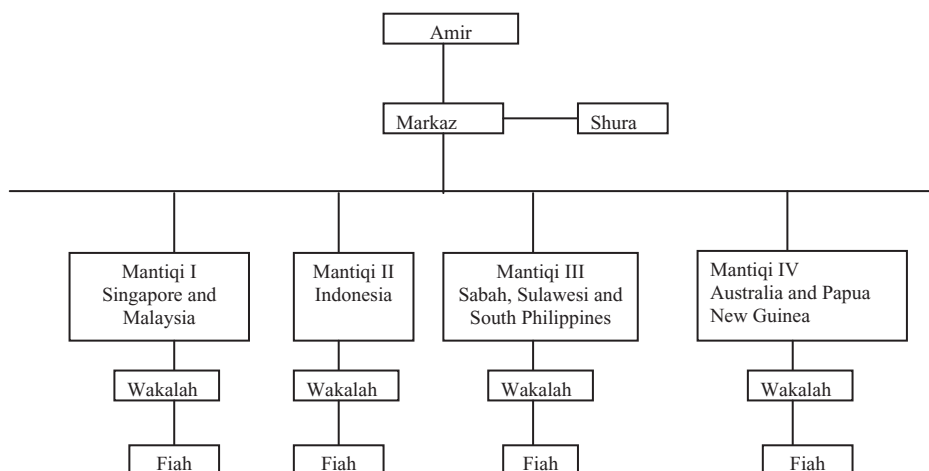
But the US is not alone in invoking the caliphate, nor is al-Qa’eda seen as its only agent. Founded in 2003, the Jemaah Islamiyah (JI, also spelled Jamaah Islamiyah) is not only South-East Asia’s ‘principal’ terrorist network, it is also said to be the ‘regional franchise’ of al-Qa’eda, with aspirations for creating a regional Islamic superstate. In 2002, CNN reported its ‘breathtaking’ plan ‘to create one Islamic state from Indonesia, Malaysia, Singapore to parts of the Philippines, Thailand and Myanmar’ (CNN, 2002). Singapore’s Prime Minister Goh Chok Tong spoke before the Council on Foreign Relations to warn:

JI’s objective was to create a *Daulah Islamiyah*, an Islamic state in Southeast Asia. This was to be centred in Indonesia but would include Malaysia, Southern Thailand, Southern Philippines, and, inevitably, Singapore and Brunei ... Their followers want to recreate the Islam of 7th Century Arabia which they regard as the golden age. Their ultimate goal is to bring about a Caliphate linking all Muslim communities (Goh, 2004).¹⁰

What is the evidence that terrorist organisations have embarked on such a grand design? Among other things, US officials cite a letter purportedly written by Osama bin Laden’s deputy, Aiman al-Zawahiri, to the now-deceased leader of the Iraqi insurgents, Abu Musab al-Zarqawi. Dated 9 July 2005, the letter outlines four ‘incremental goals’ of the Iraq insurgency. The main goal during the first stage is to expel the Americans from Iraq. The second stage would involve establishing an Islamic authority or amirate and developing it ‘until it achieves the level of a caliphate – over as much territory as you can to spread its power in Iraq’. The third stage would see the jihad wave extended ‘to the secular countries neighboring Iraq’, while the fourth stage will ‘coincide with what came before: the clash with Israel, because Israel was established only to challenge any new Islamic entity’ (Al-Zawahiri, 2005).

The JI’s plans for an Islamic superstate in South-East Asia are even more elaborate. An unprecedented insight into its ideological and organisational make-up is provided by a document, known as PUPJI, or ‘General Guide for the Struggle of Jemmah Islamiyah’.¹¹ Released by JI’s Central Leadership Council, it may be one of the most important documents on the transnational terrorist movement’s ideas and approaches to an Islamic state, since there is no comparable comprehensive strategy document recovered for al-Qa’eda.

Jemaah Islamiyah Structure (2001–2):



Amir: leader

Markaz: leadership council

Shura: consultative councils

Mantiqi: geographic divisions

Mantiqi 1 and IV mainly assigned fundraising

Mantiqi II mainly assigned leadership and recruitment

Mantiqi III mainly assigned training

Wakalah and Fiah: sub-groups

Note: Although the *mantiqis* and *wakalahs* were originally defined as districts and subdistricts, they were “actually a territorial command structure of brigades, battalions, companies, platoons, and squads.”¹

Source: *Transnational Terrorism: The Threat to Australia* (Canberra: Department of Foreign Affairs and Trade, 2004)

¹ “Jemaah Islamiyah in South East Asia: Damaged but Still Dangerous,” Asia Report N°63 page i, Paris: International Crisis Group, 26 August 2003.

According to this document, the goal of the JI’s struggle is to ‘restore the Islamic Caliphate and the sovereignty of the Syariah all over the world’. The first part of PUPJI, ‘The Principles for the Methodology to Establish the Religion’, which consists of principles for understanding the religion, maintains that ‘establishing the religion means establishing the Islamic state and subsequently the Islamic Caliphate’. This implies that a national or regional Islamic state is a first step towards an Islamic caliphate, or world state. Principle 4 of Part I restates the ‘aim in the struggle’ as ‘to guide mankind to submission to Allah, only by the restoration of the caliphate on earth’. Part III, containing the Constitution of the JI, states its objective as ‘to ensure that the administration of *Jamaah Islamiyah* is organized in order to establish the caliphate in accordance with the way of the Prophet, which guarantees the implementation of the

Syariah in a comprehensive way'. And Article 4 of the Constitution defines the 'aim of the struggle' as 'to establish the *daulah* [state] as a step towards the restoration of the Caliphate'.

Can we then take this as a manifesto for an Islamic state that would subsume Westphalian sovereignty? First, the objective of the caliphate or even the national/regional state is presented very generally and vaguely. PUPJI is basically a document about the objectives and organisation of the *jamaah* (group), not of the *daulah* (state) or *khilafah* (caliphate). Second, while PUPJI mentions 'coordination and collaboration with other Islamic states', under 'Methodology to Establish the Religion', there is no explanation of how this is to be achieved. And the very fact that it envisages cooperation with other Islamic states implies that it accepts a plurality of sovereign states, even if they may all be Islamic, at least in the interim, before the *khilafah* is established. There is no sense in the PUPJI of how the move from the *daulah* to *khilafah* is to be achieved.

The JI is an offshoot of the Darul Islam (DI), a long-established Indonesian national group whose goal was the creation of an Islamic state *within* Indonesia. Only when this goal proved unattainable, despite the opportunity offered by the chaos accompanying the toppling of the Suharto regime in 1998, did the DI move towards its regional aspirations. Indeed, there is growing evidence that internal disunity in JI has led its Indonesian members to move away from the goal of a regional superstate and focus on creating a local Islamic state or Islamic areas within Indonesia (Jones, 2005; Ross-Harrington, 2005). If an Islamic movement could not achieve its goals domestically, how could it be in a position to do so regionally, despite the support from al-Qa'eda, the extent of which remains disputed?

Indeed, the actual motivations and capabilities of terrorist organisations assume importance in view of the Bush administration's caliphobia. Most terrorist groups aspire to a national state, not a supranational polity. They develop transnational linkages as a matter of tactics, because external aid is necessary to compensate for their own limited resources, rather than as a strategic ambition. Even the Taliban, often seen as an extreme form of an Islamic state, was more concerned with establishing its authority within the internationalised frontiers of Afghanistan *vis-à-vis* its main foe, the Northern Alliance, rather than sponsoring a regional or global caliphate. As one assessment in 1999 put it, while the goal of the Taliban was to 'establish an Islamic government in Afghanistan where the *shariah* law ... will be the law of the land', it also 'believes in non-interference in the affairs of other countries and similarly desires no outside interference in their countries' internal affairs' (Matinuddin, 1999, p. 42). And it was quite willing to cooperate with the US over oil matters (Rashid, 2001).

The terror warriors in the Bush administration who invoke the spectre of the caliphate exaggerate the unity of terrorist organisations in challenging the Westphalian order. 'It's like saying the Christians will be united under one banner', said

one critic of the Bush administration's caliphobia, adding: 'It sounds nice, but whose banner will it be?' (Brown, 2005).

On a theoretical level, the radical Islamic ideology supposed to motivate terrorist organisations does challenge the Westphalian conception of state sovereignty. Radical Muslim political thinkers like Maulana Maududi, Syed Qutb, Ayatollah Khomeini and Ali Shariati argued that Islam placed sovereignty in God, while the modern Western state placed it either in the state or people (popular sovereignty) (Khan, 1999). Their ideas also challenge the decentralised Westphalian state system to the extent that sovereign authority is supposed be 'universal'; 'the Muslim community is seen as one *Ummah* [people] ... united under one sovereign by virtue of their faith and submission to the will of God' (Khan, 1999).

Yet what happens when the champions of Islamic sovereignty and statehood take the reins of power either through elections or revolution? There is no single model of a contemporary Islamic state. Entities which have called themselves Islamic states have differed widely in terms of their institutional structures: Iran displays clerical supremacy over political institutions; in Saudi Arabia and Sudan rulers govern in consultation with the clerics without being subordinate; and the fusion of clerics and government was the key feature of the Taliban regime (Hassan, 2005). Furthermore, whether there is any such thing as an Islamic state is a matter of debate among Muslim intellectuals. Asgar Ali Engineer, a prominent Indian Muslim thinker, argues:

The Prophet, in a way, took a revolutionary step, in dissolving tribal bonds and laying more emphasis on ideological boundaries on one hand, and territorial boundaries, on the other. However, the Prophet's aim was not to build a political community but to build a religious community instead. If Muslims evolved into a political community it was accidental rather than essential. Hence the Qur'an lays more emphasis on values, ethic and morality than on any political doctrines. ... The political system had to evolve over a period of time and in keeping with the needs and requirements (Engineer, 1999).

Engineer claims that 'the later emphasis on integral association between religion and politics is ... totally absent in the Holy Qur'an' (Engineer, 1999). Indeed, the leader of Muhammadiyah, the second largest Muslim organisation in the world's largest Muslim state, Indonesia, and which is more conservative than the largest organisation, Nadhlatul Ulama, argues that 'There is no Islamic state' (Rais, 2000).

What are unmistakable are the differences between various interpretations of the political aspects of Islam as they relate to the possibility, nature and objectives of an Islamic state. When it comes to state and sovereignty, Islamic ideology, like any other religious doctrine, is hardly a homogeneous body of thought. There is little reason to give more credence to the Bush administration's portrayal of the caliphate as the ultimate goal of today's terrorists than to the interpretation by scholars of Islam like Engineer regarding the apolitical nature of Islam. As M. A. Muqtedar Khan argues, 'sovereignty is a complex concept and any attempt to

simplify it can only cause problems' (Khan, 1999). While various strands of Islamic thinking may well agree that 'sovereignty belongs to God', Khan argues that Islam also delegates sovereignty to 'human agency' (Khan, 1999). If human agency matters, then the foreign policy of Islamic states and their attitude towards state sovereignty should be expected to vary from state to state, depending on the leadership and regime in power.

Moreover, there is little evidence that the notion of the caliphate is about to sweep over the Islamic world. This would not be the first time that a pan-national ideology has challenged the Westphalian system in the Middle East. In the post-war period, the Arab state system was imperilled by the idea of a single Arab nation state. But despite the emotional appeal of pan-Arabism, it was the Westphalian concept which prevailed in the Arab state system (Barnett, 1995). The idea of the caliphate may well suffer a similar fate especially because, while pan-Arabism was backed by state power from Nasser's Egypt, few states are backing the caliphate idea and most seem to be fighting it as part of their campaign against terrorism. According to a poll taken by Shibley Telhami of the University of Maryland, in Egypt, Saudi Arabia, Morocco, Jordan, the United Arab Emirates and Lebanon, only 6 per cent sympathised with al Qa'eda's goal of seeking an Islamic state (cited in Bumiller, 2005). The toppling of Westphalian sovereignty in the hands of a terrorist group, a scenario painted darkly by the Bush administration, is thus plain fear-mongering inspired by failure in Iraq.

According to the Bush administration, a terrorist victory in Iraq would spread chaos to neighbouring states, causing the death of nation states there and thus paving the way for a caliphate. Yet state death is a relatively rare phenomenon in international relations (Krasner and Pascual, 2005). Moreover, causes of state death or failure have had little to do with terrorism. The lesson of Taliban's Afghanistan is not that terrorism causes state failure, but that state weakness and failure cause and aggravate terrorism. Afghanistan was already a failed state before the terrorists took over. The reality is that few terrorist organisations have the capacity to challenge the contemporary state system, even though some may come close to achieving secession, as in Sri Lanka. As Robert Phillips notes, 'Terrorist acts are profoundly immoral. In addition, they are not as politically effective as their practitioners claim' (Phillips, 1986). International norms have been, and remain, robustly in favour of the territorial sovereignty that lies at the heart of the Westphalian system. Indeed, the territorial integrity norm is one of the most successful legal and political norms of our time, and no combination of the world's contemporary terrorist groups is about to challenge the status quo (Zacher, 2001).

The war on terror has reversed popular thinking about whether globalisation undermines state sovereignty. States which have been at the forefront of globalisation have, since 9/11, reasserted control over global financial flows for the sake of cutting off the financial lifelines of terrorist organisations (Janda, undated; McNeil, 2001). Transborder flows of capital, people and goods are increasingly

subject to state surveillance and control, supported by homeland security doctrines and mechanisms and growing information and intelligence sharing among governments, joint border patrols, visa regulations and monitoring of tourism and travel (Acharya, 2002a).

Moreover, paradoxically for terrorist organisations, instead of helping their cause of restoring the global caliphate, their actions have actually strengthened the modern national security state (Acharya, 2004a). As Kofi Annan notes, the war on terror has helped governments:

to demonize political opponents, to throttle freedom of speech and the press, and to delegitimize legitimate political grievances. We are seeing too many cases where States living in tension with their neighbours make opportunistic use of the fight against terrorism to threaten or justify new military action on long-running disputes. Similarly, States fighting various forms of unrest or insurgency are finding it tempting to abandon the slow, difficult, but sometimes necessary processes of political negotiation, for the deceptively easy option of military action (Annan, 2002).

This is ironic, especially when one looks at the US portrayal of 'sovereignty as freedom'. As Feith put it, 'Our nation's most basic interest is to protect the freedom of the American people – our ability to govern ourselves under the Constitution. The sovereignty of the United States is another way of referring to this freedom' (Feith, 2005). If so, then the setback for civil liberties after 9/11 (Acharya, 2004a) would constitute a setback for US sovereignty, at least in the sense of popular sovereignty, even as its government goes about defending national sovereignty and security from transnational terrorists allegedly committed to recreating the caliphate.

Moreover, while defending its national sovereignty, the US not only limits the freedom of its own citizens, but also the freedom of other nations. A case in point is 'rendition' (to the US) of 'illegal enemy combatants', which after 9/11 has 'expanded beyond recognition' (Mayer, 2005). Scott Horton, in a report issued by New York University Law School and the New York City Bar Association, estimates the number of people rendered under the programme since 2001 to be 150. To bypass the Geneva Conventions, the Bush administration classified detainees in the war on terror, including those from Afghanistan, not as civilians or prisoners of war, since both these categories would be protected by the Conventions, but as 'illegal enemy combatants' (Mayer, 2005). In a replay of its invocation of humanitarian intervention as a justification for pre-emption without regard to principles of multilateralism, the administration violated well-established norms and procedures of rendition, including the requirement for an extradition treaty, and judicial proceedings in the country where the arrests have been made during which some evidence to support the charge must be produced (Mandiberg, 2005).

Conclusion: Post-9/11 Sovereignty as Disorganised Hypocrisy

The attempt to hang the war on terror and the regime change and democracy promotion agendas on the prior and evolving justifications for humanitarian intervention is one of the most remarkable ironies of US foreign policy after 9/11. It also concerns my third objection to the application of the organised hypocrisy formulation to the war on terror.

The most serious effort to offer a rationale for pre-emption and preventive war by linking it with the earlier justifications for humanitarian intervention can be found in a speech to the International Institute for Strategic Studies on 13 September 2002 by Richard Haas (2002). In that speech, Haas traced the 'departure from the traditional notion of near-absolute sovereignty' in three stages. First, Rwanda triggered and Kosovo upheld the belief that 'sovereignty should only provide immunity from intervention if the government upholds basic, minimum standards of domestic conduct and human rights'. 9/11 was the second stage; it was not a whole new development, but merely 'accelerated new thinking that had already begun about the limits of sovereignty', and 'expanded the circumstances in which most countries condoned external intervention in the affairs of a state' by adding terrorism to the list of triggers. The impending action against Iraq, Haas argued, would constitute 'a third adjustment' to this evolving thinking about sovereignty, whereby classical notions of deterrence and containment had little effect in countering groups like al-Qa'eda or Saddam Hussein. Hussein, argued Haas, was 'someone who has repeatedly violated his international obligations and who is doing everything in his power to develop and conceal weapons of mass destruction'. In view of his 'history of violence against his neighbors and his own people ... and his aggressive pursuit of nuclear and other weapons', and in the 'new international environment where terrorism and WMD are intersecting ... a strong case can be made for preventive military action' (Haas, 2002).

Scholars of norm diffusion would see such American framing of the war on terror in terms of an evolving debate about intervention as a form of 'grafting' (Acharya, 2004b). On the one hand, the US has sought to capitalise on the humanitarianism debate which was undercutting the rationale for absolute sovereignty. Yet, by so doing, it also drew attention to the evolving criteria for such intervention which would render its attack on Iraq illegitimate. Those criteria had been offered, ironically, a few weeks after the 9/11 attacks, in the form of the Report of the International Commission for Humanitarian Intervention and State Sovereignty (International Commission on Intervention and State Sovereignty, 2001).¹² Among other things, the Report set down specific conditions for intervention, including 'right authority', 'just cause', 'right intention', 'last resort', 'proportional means' and 'reasonable prospects'. A brief discussion of these criteria would be in order here.¹³

In defining 'just cause' the Report excludes intervention to restore democracy or to stop human rights abuses that do not entail large-scale killing and ethnic

cleansing, or intervention by states to protect their nationals in foreign territory. 'Right intention' is similarly limited to alleviation of acute human suffering rather than alteration of boundaries or even supporting claims of self-determination. Outright overthrow of oppressive regimes is not justified, while destroying their ability to cause harm to their own people is justified.

From this perspective, the R2P can hardly be construed as a justification for Bush's 'regime change' agenda. Regime change would be grounds for intervention only if suppression of such demands by a government entails large-scale loss of life and ethnic cleansing.

In a similar vein, the 'last resort' principle is a point marked by the failure of negotiations to achieve compromise due to the intransigence of one or both parties accompanied by the prospect of imminent violence. 'Proportional means' implies a minimalism in terms of the scale, intensity and duration of military action, all of which must be commensurate with the provocation. This entails ensuring a minimal impact on the target country's political system and strict observance of international humanitarian law. 'Reasonable prospects' is defined not in terms of the defeat of a state, but of a tangible chance of success in stopping or avoiding the atrocities and suffering that acted as a trigger for the intervention. Actions that stand no chance of offering protection or which could aggravate an existing crisis are to be avoided.

The R2P deemed the 'right authority' criterion, key to the legitimacy of humanitarian intervention, to be important enough to deserve treatment in a separate chapter. The UN is designated as the most appropriate authority, the chief 'applicator of legitimacy' in humanitarian interventions. While acknowledging its limitations and imperfections, the Report leaves 'absolutely no doubt' that the Security Council remains the best place for authorising humanitarian intervention. The task of the Report is not to seek alternatives to the Council, but to make that mechanism work better. The Report mandates Council approval in all cases of intervention while urging it to act promptly to such requests.

While the Bush administration justified its war on terror and related instruments – regime change, pre-emption and democracy promotion – in terms of 'how the concept of sovereignty ha[d] evolved over the years' (Feith, 2005), it paid scant attention to the fact that this evolving discourse of sovereignty included consideration of criteria that would legitimise/delegitimise intervention. As Nicholas Wheeler put it, 'In seeking to frame the Bush Doctrine as a natural development of the norm of "sovereignty as responsibility", Haas sidestepped the crucial issue of who should decide when a state has forfeited its right to be treated as a legitimate sovereign', and 'where authority should be located for deciding when a state has forfeited its right to be protected by the principle of non-intervention' (Wheeler, 2002).

The R2P was not a unilateral effort by any one state or grouping of states (such as the Third World coalition) dominated by those with a vested interest in

pushing for or arresting the reform of the international order. Although it drew heavily from the 'just war' principles, if anything it reflected as genuine an international consensus on the fate of Westphalian sovereignty as was possible. Its membership was representative of the international community in political, civilisational and developmental terms. And going by its criteria, the doctrine of asymmetrical sovereignty fell far short of the criteria for legitimacy for humanitarian intervention that was supposed to be the prior rationale for the war on terror. Moreover, the R2P would justify intervention, even that aimed at preventing large-scale loss of life and ethnic cleansing and undertaken through a legitimate multilateral framework, only as an 'extreme', 'extraordinary' and 'exceptional' measure. Yet few members of the international community would agree that Iraq necessitated such a response, especially when the evidence of its weapons of mass destruction programme and links with al-Qa'eda had not been conclusive.

Indeed, there is a strong case to be made, as Dale T. Snauwaert has argued, that 'from the perspective of the Just War tradition the [Bush] doctrine's linkage with a power-driven, hegemonic foreign policy strategy undermines the moral credibility of the doctrine, and thus the moral credibility of the United States' (Snauwaert, 2004). On the Iraq War, among other commentators, Jimmy Carter has argued that 'clear alternatives to war' did exist. Moreover, Carter points to the lack of legitimate authority for the war. The Security Council's authorisation which forms the administration's stated legal basis of the war was meant to eliminate Iraq's weapons of mass destruction, and not 'achieve regime change and to establish a Pax Americana in the region, perhaps occupying the ethnically divided country for as long as a decade. For these objectives, we do not have international authority' (Carter, 2003).

The disjunction between the 'limits to sovereignty' thesis integral to the war on terror and the humanitarian intervention principles was highlighted by UN Secretary-General Kofi Annan, who refused to see the Bush Doctrine as an 'extension' of the humanitarian intervention rationale and challenged the attempt by Messrs Haas and Feith to link the war on terror with the intervention in Kosovo. As Annan noted,

The attacks that struck the United States on 11 September 2001 shifted the global debate – and action – away from military intervention on behalf of others, to intervention in self-defence; from a Kosovo-like debate about how far – and under what conditions – the international community would act against a State perceived to be abusing its own citizens in gross and systematic ways, to considering how far – and under what conditions – individual States, alone and in concert, would act to halt terrorism and root out its cells in dozens of countries (Annan, 2002).¹⁴

In the chaos that the attack on Iraq generated, the recommendations and significance of the R2P Report were temporarily sidelined. But the Report did cast a shadow over the legitimacy of the Iraq invasion.¹⁵ And its recommendations did get a new lease of life in the Report of the UN Secretary-General's High-Level Panel on Threats, Challenges and Change in 2004. The Report:

endorse[d] the merging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent (UN Report, 2004, p. 57).

The criteria specified by the Report to justify humanitarian intervention correspond closely to the criteria found in the R2P Report (UN Report, 2004). This norm of humanitarian intervention was one of the few substantive items from the High Level Panel Report, along with the Secretary-General's subsequent report *In Larger Freedom*, to survive the UN Summit in September 2005.¹⁶

The war on terror and the attack on Iraq have produced an extended crisis in the global multilateral order. There have been thousands of protests. Anti-Americanism throughout the world is growing. In Asia, the Bush Doctrine has caused deep uneasiness about US power and intentions (Pereira, 2003). The US–Europe fracture over Iraq cannot be seen as the kind of acquiescence that is supposed to mark the consensual organisation of hypocrisy in the global sovereignty regime. Even Francis Fukuyama, who proclaimed the ‘end of history’ after the end of the Cold War, acknowledged that the US–Europe divisions raise the question ‘whether the West is really a coherent concept’, since ‘an enormous gulf has opened up in American and European perceptions about the world, and the sense of shared values is increasingly frayed’ (Fukuyama, 2002).

Against this backdrop, to assert that the challenge posed by the war on terror to state sovereignty has not led to people ‘screaming and yelling’ or that it has not generated efforts to find new rules (not to replace sovereignty, but to identify legitimate ways of limiting it) would be simply untrue. The rationalisation offered in the name of the war on terror is an extension of the logic of humanitarian intervention as a form of organised hypocrisy, but this overlooks the fact that different forms of violation of sovereignty may have differing degrees of legitimacy. The legitimacy of humanitarian intervention cannot be equated with the legitimacy of the war on terror. Failure to distinguish principled and organised departures from Westphalian sovereignty aimed at protecting human security (as outlined in the R2P Report) from unilateral breaches of sovereignty aimed at protecting national or coalitional security and fulfilling an ideology-driven foreign policy agenda, is a critical flaw in Krasner's organised hypocrisy thesis. The current state of affairs is more accurately regarded as ‘disorganised hypocrisy’ since the responsibility for this particular act of hypocrisy is not evenly distributed, and the actions of the hegemonic powered coalition have severely undermined the multilateral system, including the unity of the so-called ‘West’.

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Notes

- 1 See for example, Vernon (1971); Camilleri and Falk (1992); Keohane (2000); Mann (2000); Ostry (1998); Weiss (1998); Keck and Sikkink (1998); Finnemore (1996; 2004); Hoffinan (2001); Wheeler (2000); Lyons and Mastanduno (1995). For a sceptical appraisal of the erosion of sovereignty thesis, see Jackson (2007) in this issue.
- 2 Bush administration officials have described terrorism as the 'greatest threat to peace in our time'. Cited in Walker (2004).
- 3 Krasner was not the first to note the violations of sovereignty, however. Many others who do so nonetheless argue that these violations do not constitute 'obsolescence, irrelevance, or transformation' (Holsti, 2004, p. 140). See also Hinsley (1986); James (1986); Jackson (1999); Philpott (2001).
- 4 As the head of policy planning in the State Department after having served an earlier term in the White House staff where he claims to have written a memo arguing that 'sovereignty was contingent on responsibility, which has actually been achieved throughout the history of sovereignties', which 'is something that we've echoed since September 11th' (Krasner interview with Kreisler, 2003).
- 5 'The world has decided that sovereignty should not protect a government perpetrating large-scale crimes against humanity within its own borders. Before us all now hangs the question of how long-standing ideas about sovereignty can be squared with the dangers of biological or nuclear weapons. Should governments with troubling records of aggression, support for terrorism, human rights abuses and the like be allowed to invoke sovereign rights to protect their development of catastrophic weapons that threaten the sovereign rights of others in the world?' (Feith, 2005).
- 6 Bull had identified four major constraints on Western intervention in the Third World: (1) 'a remarkable growth in Third World countries of the will and capacity to resist intervention'; (2) 'a weakening in the Western world of the will to intervene, by comparison with earlier periods, or at least of the will to do so forcibly, directly and openly'; (3) the growing Soviet capacity to project power, which 'facilitated Third World resistance to Western intervention'; and (4) 'the emergence of a global equilibrium of power unfavourable to intervention' in the sense that 'there has emerged a balance among the interveners which has worked to the advantage of the intervened against' (Bull, 1984, pp. 138–44).
- 7 This apparent contradiction is easily explained by the stimulating thesis presented by Adriana Sinclair and Michael Byers (2007) in this issue. Analysing American discourses about sovereignty they point out that these debates combine a statist conception which privileges territorial sovereignty, and political independence of states irrespective of their regime types, and a popular conception which stresses the rights of the people against abuse by their own governments. Although seemingly distinct, these conceptions reflect a single and exceptionalist American conception of sovereignty that seeks to protect the US from external influences while sanctioning intervention against other states. Strong evidence for this can be found in the Bush administration's justification of its 'responsibility to attack' and 'selective sovereignty' formulations, which would preserve a 'well-ordered world of sovereign states' (a self-evidently statist formulation that would protect American sovereignty as well) on the basis of the normative arguments about humanitarian intervention (rooted in conceptions of popular sovereignty) which justify its interventions abroad. (See Sinclair and Byers, 2007).
- 8 For further discussion of the various justifications for the war, see Acharya (2004a).
- 9 The caliphate, according to media representation, 'was a period of centralized rule over much of the Muslim world in ... the seventh and eighth centuries ... an empire that stretched from Spain to Central Asia' (Brown, 2005).
- 10 See also: Ministry of Foreign Affairs, Singapore, 'MFA Press Statement on the Request for Addition of Jemaah Islamiah to List of Terrorists Maintained by the UN', 23 October 2002.
- 11 *Pedoman Umum Perjuangan Al-Jama'ah Al-Islamiyyah (PUPJI, General Guide for the Struggle of Jemaah Islamiyah)*. Released by the Central Leadership Council, Jemaah Islamiyah. Translated by the International Center for Political Violence and Terrorism Research, Institute of Defence and Strategic Studies, Nanyang Technological University, Singapore.
- 12 Hereafter, cited as the Report.

- 13 The following discussion draws heavily from Acharya (2002b).
- 14 Annan himself was a champion of limited sovereignty. See Annan (1999); Luttwak (1999–2000).
- 15 See also Thakur (2004a; 2004b).
- 16 The Resolution of the Summit stated that the world leaders ‘are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity’, Resolution adopted by the General Assembly, 24 October 2005 60/1, 2005 World Summit Outcome, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement> [Accessed 16 December 2005].

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